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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,169

03/24/2004

Michael Capristo

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09/28/2006

Jeffrey S. Whittle
Bracewell & Patterson, LLP
P.O. Box 61389
Houston, TX 77208-1389

EXAMINER

MANAHAN, TODD E

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/808,169	CAPRISTO, MICHAEL	
	Examiner	Art Unit	
	Todd E. Manahan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12, 54-56 and 58 is/are allowed.
- 6) ☒ Claim(s) 22-24, 26, 36 and 46-49 is/are rejected.
- 7) ☐ Claim(s) 13-21, 25, 27-35, 38-45, 50-53 and 57 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/24/04, 10/17/05</u> | 6) <input type="checkbox"/> Other: ____ |

Double Patenting

Claims 30-40 of this application conflict with claims 62, 66, 68-70 of Application No. 11/056,893. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claims 38-40 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 62, 66, 68-70 of copending Application No. 11/056,893. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Applicant is advised that should claims 41-44 be found allowable, claims 50-53 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-17, 25, 27-31, 33, 34, 41-45, 50-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Durkins et al. (UK Patent NO. 2,335,179).

Durkins et al. disclose an apparatus comprising a container including an inner container chamber 3 formed in a medial portion of the container, and interior recess 5 inwardly extending from a proximal body end portion into the medial portion and having outer recess surface regions, and at least one recess opening 41 in the interior recess and extending from interior recess surface regions through outer recess surface regions and into the inner container chamber; and a valve 20 positioned adjacent the at least one recess opening. The device further includes a plunger 8 positioned in the interior recess. The valve comprises a flexible valve cover positioned over the recess opening (see figure 2, page 8, lines 24-25). The medial portion of the container comprises a flexible material (page 7, lines 16-20).

Claims 13-17, 21, 25-31, 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Perez et al. (United States Patent No. 1,393,903).

Perez et al. disclose an apparatus comprising a container including an inner container chamber 16 formed in a medial portion of the container, and interior recess 19 inwardly extending from a proximal body end portion into the medial portion and having outer recess surface regions, and at least one recess opening 13 in the interior recess and extending from interior recess surface regions through outer recess surface regions and into the inner container chamber; and a valve 22 positioned adjacent the at least one recess opening. The device further includes a plunger 18 positioned in the interior recess. The valve comprises a flexible valve

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cover positioned over the recess opening (see figure 2, page 2, lines 20-23). The medial portion of the container comprises a flexible material (page 2, lines 52-58).

Claims 13,14, 19, 27, 28, 30, 41, 43, 44, 50, 52, 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuhs (United Sates Patent No. 4,399,827).

Fuhs discloses an apparatus comprising a container including an inner container chamber 10 formed in a medial portion of the container, and interior recess 43 inwardly extending from a proximal body end portion into the medial portion and having outer recess surface regions, and plurality of recess openings 44 in the interior recess and extending from interior recess surface regions through outer recess surface regions and into the inner container chamber; and a valve 46 positioned adjacent the recess openings. The valve comprises a flexible valve cover positioned over the recess openings. The medial portion of the container comprises a flexible material (col. 5, lines 3-9).

Claims 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Dovergne et al. (United Sates Patent Publication No. 2003/0041869).

Dovergne et al. disclose a dispenser comprising a brush applicator having a extrusion channels 50 positioned between the proximal and distal ends and a plurality of flexible bristles 41,42 positioned adjacent the extrusion channels; and an extrusion channel closer 60,30. The closer comprises a rotatable cap 17 having closure cap openings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perez et al.

Perez et al. discloses the claimed invention except for a plurality of recess openings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of recess openings, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perez et al. in view of Mehringer et al. (United States Patent No. 5,333,627).

Perez et al. discloses the invention essentially as claimed except for a plunger release to prevent the plunger from inadvertent travel. Mehringer et al. disclose a dispenser having a plunger and plunger release 13 to prevent the plunger from inadvertent travel. It would have been obvious to one skilled in the art to provide the dispenser of Perez et al. with a plunger release in view of Mehringer et al. in order to prevent the plunger from inadvertent travel.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mehringer et al. in view of Zierhut (United States Patent No. 5,007,754).

Mehringer et al. discloses the invention essentially as claimed except for the step of removing a multi-prong closure cap. Zierhut discloses a dispenser having a multi-prong closer cap that is removed prior to use. It would have been obvious to one skilled in the art to provide the device of Mehringer et al. with a multi-prong closure cap in view of Zierhut, and thus include

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the step of removing such cap in the method of Mehringer et la. in order to prevent leakage of the hair produce prior to use.

Allowable Subject Matter

Claims 1-12, 54-56, and 58 are allowed.

Claims 22-24, 26, 36, 46-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E. Manahan
Primary Examiner
Art Unit 3732

T.E. Manahan
24 September 2006

A handwritten signature in black ink, appearing to read 'T.E. Manahan', with a long horizontal line extending to the right.